

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

**(619) 533-5800**

**DATE:** September 8, 2017  
**TO:** Herman Parker, Director, Park and Recreation Department  
**FROM:** City Attorney  
**SUBJECT:** Funds Collected by Recreation Councils

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**INTRODUCTION**

Recreation councils are “volunteer organizations that operate public recreation programs under a special use permit for the City.” 1985 City Att’y MOL 474 (85-93; Dec 9, 1985). Recreation councils generally advise the City on park development, provide recreational programming at City park facilities, and collect and expend funds raised through surcharges and programs offered in City parks and through fundraising activities.<sup>1</sup>

The Park and Recreation Department (Department), which is responsible for the organization of recreation councils under Council Policy 700-42, has asked this Office whether the funds collected by recreation councils are “City funds” subject to applicable provisions in the San Diego Charter and San Diego Municipal Code. This memo memorializes our previous advice. We believe that these funds are City funds for the reasons outlined below.

**QUESTION PRESENTED**

Are the funds collected by the City’s recreation councils subject to Charter and Municipal Code requirements governing the use of City funds?

**SHORT ANSWER**

Yes. All funds collected by recreation councils are City funds, and therefore subject to Charter and Municipal Code requirements governing the use of City funds.

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<sup>1</sup> We have attached a 1979 Memorandum of Law, which contains a more detailed overview of the City’s recreation councils. 1979 Op. City Att’y 392 (Aug. 2, 1979).

## ANALYSIS

### I. THE CITY DELEGATED AUTHORITY TO THE RECREATION COUNCILS TO ADMINISTER COMMUNITY RECREATION PROGRAMS AND COLLECT ASSOCIATED FUNDS

The City authorizes recreation councils to administer recreational programming within certain geographic areas by issuing Special Use Permits (Permit). Council Policy 700-42; Permit §§ 1.1, 1.3 (Permit attached). The Permit establishes the recreation councils' authority to administer recreational programs and identifies the park facilities and recreation centers where the recreation council may operate. Permit § 1.1. In addition, the Permit authorizes the recreation councils to generate and administer funds until the Permit's expiration. Permit §§ 1.3, 4.1, 4.2.

To determine whether recreation councils' funds are City funds, we first consider the sources of the funds. Recreation councils generate funds in the following ways: (A) surcharges in the Department's Fee Schedule (Fee Schedule); (B) participation fees for classes at City recreation centers; and (C) fundraising activities. We discuss each in more detail below.

#### A. Surcharges in the Fee Schedule

The City Council adopted the Fee Schedule to establish fees for the public's use of park facilities and for participation in certain recreational programs offered by the City.<sup>2</sup> San Diego Resolution R-309755 (May 28, 2015). The Fee Schedule also establishes surcharges payable to recreation councils when a park facility is rented for "camps, clinics, tournaments, fundraising, promotional and commercial activities." *Id.* For example, a resident adult basketball league using an outdoor City court for a tournament pays the City \$12.25 per hour per court and pays the recreation council an additional \$11.00 per hour per court. *Id.* When a group rents a room within a City recreation center, the user pays the City a per hour rental fee according to the Fee Schedule and pays the recreation council an additional \$15.00 per hour per room. *Id.*

#### B. Participation Fees

Recreation councils may conduct and charge for specialized classes at recreation centers, subject to the Department Director's approval.<sup>3</sup> Permit §§ 1.5, 3.4, 4.1, 4.2. Recreation councils may retain a portion of the total proceeds collected from specialized classes for park-related purposes, including "promoting and conducting community recreation programs, purchasing equipment, and providing assistance where necessary with the [recreation council's] accountability and record keeping functions." Permit § 4.2. For example, a recreation council contracts with a karate instructor to teach a nine-week course at the recreation center for a \$100 charge to each participant. Participants pay \$100 to the recreation council, either in person at the recreation

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<sup>2</sup> The City collects a surcharge to recover its costs of service pursuant to Council Policy 100-05. A recreation council may use funds to cover costs or as described in its Permit.

<sup>3</sup> According to Department staff, recreation councils restrict fees to the amount needed to recover the cost of the program.

center or through the City's online registration software. The recreation council and instructor split the total collected fees based on an agreed-upon percentage. The room at the recreation center is provided for the course without charge to either the instructor or recreation council. Resolution R-309755 (Exhibit A: Fee Schedule).

### C. Fundraising

Most recreation councils are nonprofit corporations and some engage in fundraising to benefit the parks within their assigned areas. Recreation councils may conduct special events and fundraising activities within their areas, subject to the Department Director's approval. Permit §§ 1.3, 1.5.

## II. FUNDS RECEIVED BY RECREATION COUNCILS ARE CITY FUNDS BECAUSE THE RECREATION COUNCILS OPERATE RECREATIONAL PROGRAMS AND COLLECT AND EXPEND FUNDS ON THE CITY'S BEHALF

Charter section 55 establishes the City's authority and control over the operation of City parks and park facilities.<sup>4</sup> The Mayor and Department Director have authority to charge the public for recreational programs and for the use of park facilities.<sup>5</sup> San Diego Charter § 55; San Diego Municipal Code § 22.1502 (delegating authority "to establish fees for the use of park and recreation facilities and services" subject to the Mayor's approval and "to fix rental charges" subject to City Council approval).

Council Policy 700-42 controls recreation councils' collection and expenditure of funds paid by the public and gives recreation councils certain administrative responsibilities at the City's recreation centers. In 1981, City Council adopted Council Policy 700-42 formally recognizing recreation councils and authorizing them to promote and administer recreation programs in the community. San Diego Resolution R-254869 (Aug. 24, 1981); 1995 City Att'y MOL 558 (95-64; Sept. 12, 1995). In 1986, City Council amended the Council Policy to recognize the role played by recreation councils including "contracting for and conducting recreation programs when the City cannot afford to provide them." City Mgr. Report No. 86-457 (Oct. 3, 1986). Through this amendment, City Council directed the City to "work cooperatively with recreation councils in their fiscal administration, planning, promoting, and development of community recreation programs." Council Policy 700-42; San Diego Resolution R-266849 (Oct. 27, 1986).

The amended Council Policy "expand[ed] and formalize[d] the City's role with recreation councils with regard to *fiscal administration*." City Mgr. Report No. 86-457 (Oct. 3, 1986) (emphasis added); Resolution R-266849. Administration is defined as "[t]he management or

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<sup>4</sup> Charter section 55 vests the City Manager with "control and management of parks, parkways, plazas . . . playgrounds, recreation centers, recreation camps and recreation activities held on any City playgrounds, parks, beaches and piers, which may be owned, controlled or operated by the City."

<sup>5</sup> The California Constitution requires voter approval of taxes and limits the City's authority to impose fees. Cal. Const. art. XI, § 5 and art. XIII C; see 2011 City Att'y MOL 46 (2011-3; Mar. 4, 2011) (discussing the impact of Proposition 26 on City fees and charges).

performance of the executive duties of a government, institution, or business.” *Black’s Law Dictionary* 44 (7th ed. 2002). This amendment “added the word “administering” to the advisory activities of the [recreation] Councils . . . [and] gave the [recreation] Councils considerably more power, and removed them from the status of purely advisory boards.” 1995 City Att’y MOL 558 (95-64; Sept. 12, 1995).

By adopting and amending Council Policy 700-42 and issuing individual Permits, the City delegated authority to administer recreational programming within certain geographic areas to individual recreation councils. Resolution R-254869 (Aug. 24, 1981); *see Los Angeles County v. Nesvig*, 231 Cal. App. 2d 603, 616 (1965); City Att’y MOL 2015-7 (Apr. 23, 2015) (discussing delegating land use and permitting authority to a nonprofit public benefit corporation). Recreation councils may only receive funds under the terms and conditions of the Permit. Permit § 4.2; *see also*, Standard Operating Procedures and Responsibilities for Recreation Councils, Policy 1.1 (July 2015) (“No [recreation] Council shall be entitled to a relationship with and benefit from the City absent an effective Permit.”). The Permit establishes the recreation councils’ authority to operate in their assigned parks, including conducting meetings, holding special events, and contracting with instructors to provide specialized classes to the public. Permit §§ 1.3, 1.5. The Permit allows recreation councils to collect funds from the public and to expend funds for park-related purposes. Permit §§ 4.1, 4.2. The Permit also contains significant limitations on the use and expenditure of funds and requires recreation councils to report budgeting and financial information to the City on an annual basis. Permit §§ 7.1-7.5. If, for example, a recreation council purchases equipment or supplies for a park facility, the property must be kept at the park facility and belongs to the City. Permit § 4.4. Upon expiration or termination of the Permit, the recreation councils must remit all funds to the City. Permit § 9.6(a).

While the City may legally delegate authority to the recreation councils to administer funds, this does not mean that the City has relinquished its obligation to administer the funds or its right to claim the funds.<sup>6</sup> *See Nesvig*, 231 Cal. App. 2d at 616; *Epstein v. Hollywood Entertainment Dist. II Business Improvement District*, 87 Cal. App. 4th 862, 873 (2011) (When a public entity delegates administrative functions to a private organization, that organization “must comply with the same laws and regulations as the public entity that is delegating its authority.”). An unpublished opinion by the Fourth District Court of Appeal upheld the City’s right to funds collected by a recreation council. *City of San Diego v. Pacific Beach Recreation Council, Inc.*, No. D041232, 2003 WL 22963093 (Cal. Ct. App. Dec. 17, 2003). In that case, the City sued the Pacific Beach Recreation Council (PBRC) when PBRC refused to remit its funds to the City after its Permit expired. *Id.* The court determined that upon expiration of its Permit, PBRC “lacked any contractual authority to spend those funds and was legally obligated to remit the

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<sup>6</sup> For example, the expenditure of City funds are subject to state and local conflict of interest laws. *See* Cal. Gov’t Code § 1090; Cal. Gov’t Code § 87100. When contracting for goods and services paid for with City funds, recreation councils are required to comply with the provisions of the Charter and Municipal Code governing competitive procurement (San Diego Charter § 94; SDMC § 22.3203), the City’s Equal Employment Opportunity Program (SDMC §§ 22.2701-22.2708); and the Equal Benefits Ordinance (SDMC §§ 22.4301-22.4308).

moneys to City.” *Id.* at 4. The court reasoned that “[a]lthough the funds collected by PBRC were deposited into [PBRC] bank accounts, *the Permit imposed stringent contractual limitations on PBRC’s power to use the moneys.*”<sup>7</sup> *Id.* at 3 (emphasis added). Additionally, the court held that “. . . the Permit unambiguously required that *all* funds in PBRC’s bank account be used only for recreation-related activities and services regardless how those funds might be allocated under PBRC’s internal operating documents.” *Id.* at 4. While unpublished cases are of limited precedential value, the reasoning in this case would likely be persuasive to a court if the issue were to be litigated again.

### CONCLUSION

The City formalized its creation of recreation councils by adopting Council Policy 700-42. Over time, the City delegated the administration of programming in City parks to recreation councils, including the collection of funds from program participants and City park patrons. Through this delegation of authority, the recreation councils collect funds on behalf of the City and hold funds until the Permit terminates or expires, at which point, the money reverts to the City. Based on the source of funds collected by recreation councils and the City’s delegation of recreational activities in City parks contained in Council Policy 700-42, the Fee Schedule, and the Permit, we conclude that recreation council funds are City funds, subject to Charter and Municipal Code provisions applicable to City funds.

MARA W. ELLIOTT, CITY ATTORNEY

By           /s/ Heather M. Ferbert            
Heather M. Ferbert  
Deputy City Attorney

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Attachments

cc: Honorable Mayor and City Councilmembers  
David Graham, Deputy Chief Operating Officer  
Andrea Tevlin, Independent Budget Analyst

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<sup>7</sup> The court further found the Permit phrase “all funds” had a clear meaning and applied to not only funds collected by PBRC through its administration of recreational programming, but also to funds collected through PBRC’s fundraising efforts. *Id.* at 4.

CITY of SAN DIEGO  
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Phone: 236-6220

August 2, 1979

Public Facilities & Recreation Committee

City Attorney

Liability of Recreation Councils

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On June 21, 1979, Mr. Vance Brown of the San Carlos Recreation Center Executive Committee appeared before the Public Facilities and Recreation (PF&R) Committee to express concern over the City's relationship with recreation councils. It had come to the attention of Mr. Brown that the City may have no duty to defend and indemnify individual council members in case of a lawsuit. Mr. Brown's communication was referred to this office for an opinion as to the legal responsibility of The City of San Diego to hold members of recreation councils harmless from liability for activities of the organization. This office gave an oral response to the communication at the Committee's meeting of July 19, 1979. This memorandum puts in writing what was expressed at that meeting.

Mr. Brown's inquiry was no doubt prompted by the April 3, 1979 memorandum of this office to the Park & Recreation Director in which we stated that contrary to a letter and memorandum from then Councilman Floyd Morrow dated September 29, 1976 and October 7, 1976 respectively, this office had not opined that members of recreation councils are protected from liability by the City. Our April 3, 1979 memorandum also caused the Park & Recreation Director to request a written opinion from us on the question.

Although this memorandum may not reflect it, the question has been explored exhaustively, both as to history and purposes of recreation councils, as well as to the City's legal relationship to them. We must conclude that there is nothing that we can find in the existing legal relationship that would require the City to hold members of recreation councils harmless and to defend them in any litigation arising from activities of the recreation councils. That is not to say it would not be in the best interest of the City to do so in a given instance where a member of a recreation council is engaged in activity in furtherance of a city recreation program and under the direction of an employee of the Park & Recreation Department.

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In order to understand our conclusion more clearly, an analysis of the history and development of recreation councils will be helpful.

Recreation councils are apparently instrumentalities utilized by many cities in order to further public recreation programs. Those in San Diego began to be formed in 1949 during Mayor Harley Knox' second term in order to provide "closer community contact" and to render advice to the City Recreation Department at a neighborhood level with respect to the operation of recreation centers. By 1957, six recreation councils had been formed and their activities were such that Councilman Justin Eyenson suggested that they be given some "official status." Despite this, however, the only action that appears to have been taken was by the Park & Recreation Commission. At its August 20, 1957 meeting, the Commission acted to "recognize" by issuing a "charter" to recreation councils which adopted bylaws that would:

- a. Provide for membership representative of the total community.
- b. Provide for Park and Recreation Department representatives to serve on governing boards, i.e. Recording Secretary.
- c. Provide for semi-annual or annual election of officers; and
- d. Purpose of the council stated to be the promotion of the community recreation program through planning, publicizing, coordination and interpretation.

It was further stated in the minutes of the meeting that the charters would be "revoked if the conditions required by the bylaws or rules and regulations are not met."

The action of the Park & Recreation Commission apparently formalized procedures established by its predecessor, the Recreation Commission, which the records of the City show "chartered" five recreation councils in 1952. The Recreation Commission was created by charter amendment in 1947. It was combined with the Park Commission and renamed by another amendment in 1953. The Commission was entirely removed from the charter in 1963 and replaced by the Park & Recreation Board created under Section 43(a) of the Charter. Whatever the name, from 1947 to the present, whether as a commission or a board, its powers and duties were only of an advisory nature. Neither the Commission nor the Board had or has the power to issue "charters" because clearly both were or are advisory bodies only.

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The councils cannot be considered to be a "committee or board" organized under provisions of Section 43 of the Charter. They were not created by the Mayor, Manager or the Council. They, in fact, were self-organized. Thus, the issuance of "charters" to recreation councils must be viewed as an informal action, one without official City Council or City Charter sanction.

Regardless of the status of the so-called "charter" as a legal instrument, we must observe at this point that not one of the bylaws of 31 recreation councils included a provision that the purpose of the organization was for the "promotion of the community recreation program through planning, publicizing, coordination and interpretation" as required by the August 20, 1957 minutes. Instead, most provide that the purpose of the organization is to be consistent or in accordance with the policies of the Park & Recreation Department. One did not even make reference to the policies of the Park & Recreation Department. As to the requirement of a representative of the Park & Recreation Department serving on the governing board, 12 of the bylaws did not so provide. One fact the examination disclosed was that each of the bylaws was different. One had a provision that it was the "agent of the City in handling all moneys." Another required that the Recreation Center Director, a City employee, was to be one of the co-signers of the recreation council's checks and that the Recreation Director was responsible for all money being spent for the purpose collected. Some bylaws limited membership to community organizations in the area. Others added any interested individual living in the neighborhood. Several had no qualifications at all. The differences in the bylaws are understandable and reflective of the individual character of the various neighborhoods involved and of the fact that each recreation council is essentially an independent, atypical organization.

Prior to 1975, recreation councils were issued what was termed a "Special Events Permit." It was authorized by Resolution No. 116321 adopted by the City Council on January 10, 1954 to allow use of recreation centers by recreation councils for yearly periods to conduct "special events" or "fund raising projects" under the supervision of the Park & Recreation Director. The permit required accurate books subject to City inspection and all funds collected to be used to promote activities on and to maintain and operate the recreation centers. Further, the permit requires that the bylaws of the permittee be approved by the Park & Recreation Director. The form of the permit was amended on August 21, 1975 by City Council Resolution No. 214067. The name was changed to Special Use Permit, the use was not limited to specific premises and a nondiscrimination provision was added.

It is interesting to note that at the same time the Council amended Special Use Permits, it also amended the Preferential Non-Exclusive Use and Occupancy Permits by which instrument the City "leases" for one-year periods many City facilities in Balboa Park and elsewhere. A July 25, 1975 Report to the Council from the Manager explained the function of these two permits as follows:

#### BACKGROUND

Preferential Non-Exclusive Use and Occupancy Permits authorize various organizations to operate City-owned facilities on a full-time basis. Special Use Permits enable Recreation Councils and City co-sponsored special interest organizations to utilize City-owned facilities, on a space available basis, to operate special recreation programs and to raise funds to support these programs.

The City supplies utilities and performs building maintenance and repairs not caused by the Permittee's use or occupancy. The organizations finance the direct operating expenses of their programs.

These permits also provide for supervision of financial transactions made by the Permittee in connection with the operation of the City facility and require annual financial statements.

Both types of permit are issued to organizations on the basis of Council Policy 700-4, Balboa Park Leases and Rentals, which specifies:

"Group activities or programs of a cultural or recreational nature which are sponsored by the Recreation Department, and civic events authorized by the City Council shall have free use of the buildings. Such groups or activities shall be given preference in the scheduling or assignment of building space."

Although some of the facilities covered by these permits are not within the confines of Balboa Park, the above philosophy has been extended to cover their use. In the case of conflict between two organizations requesting

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use of a single facility, organizations are evaluated by staff in regard to the quality and nature of their public recreational service, suitability of the facility involved, hours the facility will be open to the public, and the organization's cultural outreach efforts and future plans.

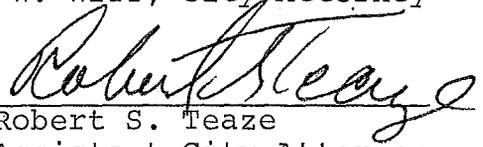
One major difference in the two permits not noted above is that the Preferential Non-Exclusive Use and Occupancy Permit contains a clause by which the permittee agrees to hold the City harmless from any of the permittee's activities on the premises. This is in contrast to the concern now expressed that as to the Special Use Permits, the City should hold the permittee harmless.

In summary, recreation councils were organized as unincorporated associations by persons and representatives of groups of persons interested in furthering neighborhood recreation programs. They are not official City organizations because they do not conform to Charter Section 43 requirements for the creation of committees and boards. As independent organizations, each recreation council has entered into a contractual relation with the City through a Special Use Permit by which they are allowed to conduct recreation activities on City property which are in furtherance of City recreation programs.

It is recognized that when engaged in furtherance of City recreation programs, members of recreation councils often act under the supervision, direction and control of City Park & Recreation personnel. Under such circumstances, the City could unquestionably be liable for the actions of members of recreation councils and would undoubtedly for reasons of self-interest want to defend such individuals and would, if found liable, pay any judgment. However, any such defense is under the present state of affairs not the City's obligation. If the Council desires that the City assume such an obligation, it would be the suggestion of this office that the Special Use Permits be amended to so provide. Attached hereto is a draft of two "Whereas" clauses and a paragraph "10" which could be added to the current permit form by Council resolution. It would be our hope that such an amendment would allay concerns that have surfaced lately.

JOHN W. WITT, City Attorney

BY

  
Robert S. Teaze  
Assistant City Attorney

RST:rb 260

Enc

cc Members of Park & Recreation Board  
Deputy City Manager Sue Williams  
Director, Park & Recreation, Armand Campillo  
Superintendent, Recreation Div., Jack Krasovich

WHEREAS, Permittee is an unincorporated association independent of City which was formed by representatives of community organization and interested individuals for the purpose of assisting the Park and Recreation Department of the City in promoting, planning, publicizing, coordinating and interpreting its community recreation programs;

WHEREAS, members of permittee from time to time act under the direction, supervision or control of Park and Recreation Department personnel;

\* \* \* \* \*

10. City in consideration of the volunteer services rendered by members of PERMITTEE from time to time does hereby agree to hold such members harmless from liability for acts of such members taken while engaged in assisting the Park and Recreation Department in Community Recreation Programs when such acts are done under the immediate direction, control or supervision of Park and Recreation Department personnel and the City Attorney shall defend such members when named jointly with The City of San Diego in any legal proceeding for damages resulting from the conduct of a City recreation program.



THE CITY OF SAN DIEGO  
SPECIAL USE PERMIT  
Recreation Council

This SPECIAL USE PERMIT (PERMIT) is granted effective as of this 1st day of \_\_\_[DATE]\_\_\_ 2015 by THE CITY OF SAN DIEGO (CITY), and is accepted by the \_\_\_[NAME]\_\_\_, a \_\_\_[ENTITY TYPE]\_\_\_ (COUNCIL), whose Tax Identification Number is \_\_\_\_\_.

WHEREAS, COUNCIL is a non-profit organization which was formed by representatives of community organizations and interested individuals for the purpose of assisting CITY's Park and Recreation Department (DEPARTMENT) in promoting, planning, publicizing, coordinating, and providing community and recreational programs; and

WHEREAS, CITY desires to provide facilities to its citizens, guests, non-commercial local societies, clubs, and organizations engaged in civic, social, educational, cultural, special events, philanthropic work, or activities;

NOW, THEREFORE, it is hereby mutually agreed by and between CITY and COUNCIL as follows:

**ARTICLE I**  
**COUNCIL DUTIES; NON-EXCLUSIVE LICENSE**

- 1.1 Terms and Conditions. CITY grants to COUNCIL a non-exclusive license to conduct park and recreational programs in those certain CITY park facilities within the geographic area (AREA) depicted on the map attached hereto as Attachment A, and to make recommendations to the Park and Recreation Department Director and/or his or her staff designee (DIRECTOR) concerning recreation matters in said AREA. COUNCIL may sponsor activities outside the AREA only upon receiving prior written approval of the DIRECTOR. Park facilities and areas may be added to or deleted from the jurisdiction of COUNCIL by CITY, in coordination with COUNCIL but subject to CITY's sole discretion, upon written notification to COUNCIL.
- 1.2 Non-Exclusive Use. The general public shall not be wholly or permanently excluded from the AREA or any sponsored activity conducted by or authorized by the COUNCIL. However, COUNCIL may develop reasonable restrictions for programs or activities within the AREA provided that they are consistent with the rights of the general public, comply with all applicable laws and CITY policies, and are designed to enable COUNCIL to use the AREA for the purposes granted herein. All restrictions imposed by COUNCIL are subject to review and approval by the DIRECTOR, in DIRECTOR's sole discretion.

- 1.3 Use of AREA. COUNCIL shall only use the AREA for the purposes of conducting COUNCIL meetings, special events, fund-raising activities, DEPARTMENT programs, and programs contracted for by COUNCIL, and for assisting with coordination of AREA field and facility usage. All such COUNCIL use of the AREA shall be subject to the prior written approval of the DIRECTOR in each instance. All COUNCIL flyers, brochures, electronic media, programs, contracts, co-sponsored events and promotional materials must be approved by the DIRECTOR prior to duplication, execution and/or distribution. COUNCIL shall obtain the prior written approval of the DIRECTOR prior to sponsoring or co-sponsoring any activities, which approval may be granted in the sole discretion of the DIRECTOR. The rights and responsibilities under this PERMIT are separate and independent from any other use permit or organizational rights and responsibilities of separate park users.
- 1.4 Political Activities. All COUNCIL activities shall be non-partisan and non-sectarian. The COUNCIL shall not officially or unofficially participate in, or lend its influence to, the adoption or defeat of any public ballot measure, or the election of any candidate for public office, regardless of whether the nomination or election is partisan or non-partisan. Notwithstanding the foregoing, COUNCIL may provide a neutral forum for public debate such as at a "candidate forum" and similar events, and the COUNCIL may endorse non-partisan ballot measures that directly benefit park and recreation facilities and services and which have been officially supported by a vote of the San Diego City Council.
- 1.5 COUNCIL Contracts. COUNCIL shall only enter into contracts with individuals or businesses that comply with all applicable laws and regulations, including the requirement that individuals or business entities obtain a City business tax certificate unless otherwise lawfully exempt. In its role as a program provider, the COUNCIL shall be responsible for all contractual relationships involved with COUNCIL programs and activities. All COUNCIL contracts shall be executed by the COUNCIL in its official name and shall be in a form approved by the DEPARTMENT. All such contracts for services shall use the most recent version of the "Independent Contractor Agreement" provided by the DEPARTMENT.

## **ARTICLE II TERM**

- 2.1 Term. The PERMIT shall be in effect until close of business on December 31, 2016, subject to extension by CITY as determined by CITY in its sole discretion.

## **ARTICLE III COUNCIL GOVERNANCE**

- 3.1 Adherence to DEPARTMENT Standard Operating Procedures. COUNCIL shall fully adhere to and comply with all of the procedures, terms and conditions set forth in the "Standard Operating Procedures and Responsibilities for Recreation Councils" (SOP), attached hereto as Attachment B.

- 3.2 Governance Documents of COUNCIL. As applicable, all corporate governance documents of COUNCIL shall provide that in the event of a conflict between any provision of any COUNCIL corporate governance documents and this PERMIT and the SOP, the terms, conditions and obligations of this PERMIT and the SOP shall control.
- 3.3 Non-Profit Status. COUNCIL shall obtain and maintain status as a non-profit organization from the Internal Revenue Service and the State of California during the term of this PERMIT and comply with all applicable laws and regulations to maintain such status as a non-profit organization. COUNCIL shall provide any documentation requested by the DEPARTMENT regarding COUNCIL's non-profit status.
- 3.4 Cooperation and Coordination with DEPARTMENT. COUNCIL shall cooperate and coordinate with the DEPARTMENT in regards to all aspects of COUNCIL's activities, including with regard to all scheduling, procurement, and provision of programs, special events, enhanced services, facilities, equipment, and supplies. COUNCIL shall coordinate with CITY when CITY is arranging for repairs of park facilities, repair or replacement of equipment, or undertaking of any park development projects. Furthermore, COUNCIL shall provide input and make recommendations to the DEPARTMENT, the Park and Recreation Board, and other park advisory committees with regard to park development projects planned within the AREA, or other areas as determined and directed by the DEPARTMENT, in accordance with applicable City Council Policy including Council Policy 600-33, which may be amended from time to time.
- 3.5 Taxes. The parties acknowledge that this PERMIT is not a lease of real property and, as such, the parties do not intend to create any possessory interest that would be subject to taxation. However, COUNCIL understands and acknowledges that the assessment and levy of certain taxes is not within the control or jurisdiction of the CITY. COUNCIL further acknowledges that this PERMIT may create a possessory interest subject to property taxation, and that COUNCIL may be subject to the payment of taxes levied on that interest. Accordingly, in the event that any taxes are assessed or levied upon the AREA or upon COUNCIL by reason of COUNCIL's use, development, maintenance or restoration of the AREA, the DIRECTOR agrees to work with COUNCIL to resolve any assessment or levy of such taxes. COUNCIL shall notify and provide to the DIRECTOR a copy of any taxes, assessments, and fees levied upon the AREA or upon COUNCIL within ten (10) days of receipt.

#### **ARTICLE IV COUNCIL FUNDS**

- 4.1 COUNCIL Fees. All fees imposed by COUNCIL are subject to review and approval by the DIRECTOR, in DIRECTOR's sole discretion. In addition, COUNCIL shall collect from participants and users of programs and activities all other fees and charges as established in CITY's regular fee schedules, which may be amended from time to time. All such fees and charges shall be timely remitted to CITY.

- 4.2 Use of COUNCIL Funds. Provided COUNCIL is in compliance with this PERMIT and the SOP, COUNCIL is eligible to collect and expend funds. Any funds collected or received by COUNCIL shall be used only for park-related purposes within the AREA, including promoting and conducting community recreation programs, purchasing equipment, and providing assistance where necessary with the accountability and record keeping functions related to COUNCIL activities. Any other activities or services funded by COUNCIL must be approved in advance by the DIRECTOR, in his or her sole discretion. Funds collected or otherwise received by COUNCIL shall be used and expended in compliance with all applicable laws, regulations, policies, and applicable DEPARTMENT Instructions (“DEPARTMENT Instructions” to mean those certain policy and procedure directives promulgated by the DIRECTOR and subject to periodic amendment). The designation or earmarking of any funds must be approved by the DIRECTOR in each instance.
- 4.3 Expenditure of Reserves. COUNCIL shall, to the best of its abilities, expend all of its funds in the calendar year in which the funds were collected. In the event that COUNCIL has carryover funds at the end of any calendar year and is required to adopt a Carryover Expenditure Plan pursuant to Article VII, COUNCIL shall expend carryover funds as set forth in COUNCIL’s adopted Carryover Expenditure Plan.
- 4.4 Ownership of Property Acquired. All property acquired by COUNCIL shall be placed and maintained within the AREA and shall be the property of the CITY, subject to use by and control of the CITY.

**ARTICLE V  
IMPROVEMENTS; ALTERATIONS**

- 5.1 Improvements/Alterations. COUNCIL shall not make or cause any improvements, changes, or alterations to be made to the AREA, or any portion thereof, without prior written approval of the CITY. Any and all improvements, fixtures, structures and installations or additions to the AREA constructed or installed by COUNCIL shall be the property of CITY. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the AREA.
- 5.2 Permits and Approvals. COUNCIL, at COUNCIL’s sole cost and expense, shall obtain all required permits and approvals from the applicable local, state and federal authorities, including without limitation from CITY. By entering into this PERMIT, neither CITY nor the City Council is obligating itself to COUNCIL or to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to occupancy, use, development, maintenance or restoration of the AREA or any facility or portion therein.
- 5.3 Prevailing Wage. In the event that COUNCIL procures services in qualifying amounts and which constitute a “public works contract” or a “maintenance contract” under CITY’s “Compliance with State Prevailing Wage Laws” Ordinance (SDMC section 22.3019, which may be amended from time to time), COUNCIL shall ensure, including

by providing for such in all agreements for such services, that the contractor for such services shall comply with said Ordinance and all applicable California Labor Code provisions regarding prevailing wages. COUNCIL shall obtain from CITY, prior to entering into any agreements for or otherwise authorizing commencement of any such public works or maintenance contract, the most current version of CITY's standard contract provisions, for use by COUNCIL in ensuring compliance with these provisions.

## **ARTICLE VI COUNCIL RECORDS**

- 6.1 Records and Inspection. Unless otherwise stated in the SOP, COUNCIL shall keep accurate and complete books of accounts of all financial transactions by COUNCIL in connection with COUNCIL's use of the AREA. All COUNCIL records shall be maintained for five years. COUNCIL shall make all data and records with respect to all matters covered by this PERMIT available to CITY at reasonable locations within the City and County of San Diego and shall assist the DEPARTMENT in any response to requests for records, received pursuant to the California Public Records Act. At any time during normal business hours and as often as CITY deems necessary, COUNCIL shall permit CITY to make audits of any invoices, materials, payrolls, records, and other data and media relating to all matters covered by this PERMIT. The DIRECTOR, in his or her sole discretion, may terminate this PERMIT for COUNCIL's failure to maintain or fully provide CITY with any requested documentation in a timely manner.

## **ARTICLE VII BUDGETS, FINANCIAL REPORTS AND AUDITS**

- 7.1 Budget. COUNCIL shall prepare and adopt an annual budget for each calendar year, and any remainder portion thereof, during the Term, which budget shall be adopted prior to January 1<sup>st</sup> of each year. COUNCIL shall submit a copy of the adopted budget to the DIRECTOR within ten (10) days of its approval by the COUNCIL.
- 7.2 Financial Statements. COUNCIL shall prepare an annual financial statement summarizing COUNCIL's receipts and disbursements for each calendar year during the Term. COUNCIL shall submit a financial statement to the DIRECTOR on or before April 1<sup>st</sup> of each calendar year. If the total balance of all of the accounts maintained by COUNCIL exceeds One Thousand Dollars (\$1,000.00) at the end of the calendar year, the COUNCIL shall identify each account containing ten percent (10%) or more of the total balance on its financial statement.
- 7.3 Carryover Expenditure Plan. At the end of the calendar year, if the total balance of all of the accounts maintained by COUNCIL exceeds One Thousand Dollars (\$1,000.00), COUNCIL shall prepare and adopt a Carryover Expenditure Plan on the form provided by the DEPARTMENT for that purpose. The Carryover Expenditure Plan shall be approved by the COUNCIL and subject to review by the DIRECTOR.
- 7.4 Audits. CITY reserves the right to require COUNCIL to perform and submit to CITY an

audit, in form and content deemed acceptable to CITY in CITY's sole discretion, of all finances, revenues, and expenditures of COUNCIL. COUNCIL shall timely submit to CITY any such requested audit. CITY reserves the right to independently review all audits and audit materials.

- 7.5 Extensions. The DIRECTOR, in his or her sole discretion, may extend any of the deadlines set forth in this section up to thirty (30) calendar days upon written request by COUNCIL.

## **ARTICLE VIII INDEMNIFICATION**

- 8.1 Defense and Indemnification. CITY hereby agrees to defend and indemnify current and past COUNCIL members, directors and officers ("MEMBER" or "MEMBERS") from liability for acts of the MEMBER performed while engaged in COUNCIL duties authorized by this PERMIT, provided that such acts were performed under the direction, control or supervision of the DEPARTMENT. CITY shall further defend and indemnify the MEMBERS from liability for acts performed in connection with the COUNCIL acting as a body in conformance with this PERMIT and the policy guidelines of CITY. CITY shall not, however, defend or indemnify any MEMBER or MEMBERS for any acts allegedly occurring: (1) as the result of a criminal act; or (2) in violation of this PERMIT, COUNCIL's bylaws or corporate governance documents, or any CITY policy or procedure. Further, the CITY may refuse to defend and indemnify any MEMBER if the MEMBER acted or failed to act because of fraud, corruption, actual malice, or bad faith, or if the MEMBER does not reasonably cooperate with CITY in the defense of any claim or action. Nothing in this PERMIT shall require CITY to indemnify or defend any MEMBER against a claim for punitive damages, except as and when authorized by City Council pursuant to state law. In order to be eligible for defense and indemnification, the COUNCIL and/or the MEMBER must make a written request for representation to the DIRECTOR within five (5) working days of having been served with the first complaint in any legal action. The CITY's obligation to indemnify and defend MEMBERS pursuant to this Article shall survive the expiration or earlier termination of this PERMIT.

## **ARTICLE IX APPOINTMENTS, SUSPENSION AND TERMINATION**

- 9.1 Appointment of MEMBERS. In the event that the COUNCIL has fewer than five (5) current MEMBERS, the DIRECTOR may, in his or her sole discretion, appoint a replacement MEMBER or MEMBERS. The replacement MEMBER(S) shall have all rights and responsibilities of other MEMBERS, and shall serve the balance of the membership term(s) of the replaced MEMBER(S).
- 9.2 Suspension. The DIRECTOR may summarily suspend the COUNCIL for a period of not more than ninety (90) days for any violation of this PERMIT or in the event that any MEMBER is accused, charged, or convicted of any act or omission involving fraud or moral turpitude as determined by the DIRECTOR and pending an investigation by the

DEPARTMENT. If the DIRECTOR notifies COUNCIL that CITY has suspended this PERMIT, COUNCIL shall not expend any funds from the date of receipt of such notification until the suspension is lifted or other applicable action is taken.

- 9.3 Duty to Notify CITY. COUNCIL shall provide the DIRECTOR with written notice within three (3) working days of becoming aware of any allegations, charges or conviction of any MEMBER for an act or omission involving fraud or moral turpitude.
- 9.4 Termination of PERMIT. This PERMIT may be terminated by either party upon giving thirty (30) calendar days written notice from one party to the other.
- 9.5 Appeal of Termination. If the PERMIT is terminated by the DEPARTMENT for CITY's convenience (i.e., no default of the PERMIT has been alleged), the COUNCIL may appeal the DEPARTMENT's decision, in writing, to the CITY. An appeal must be received within ten (10) calendar days from the date of the DIRECTOR's notice that the PERMIT will be terminated. The CITY shall respond in writing to any appeal no later than ten (10) calendar days prior to the effective date of the termination. The CITY shall establish appropriate procedures as necessary to implement the appeal process. The COUNCIL shall have no right to appeal a termination of the PERMIT by the CITY for any determination by CITY that the COUNCIL has violated/defaulted any term or condition of this PERMIT.
- 9.6 Continuing Responsibilities. In the event that CITY does not renew this PERMIT prior to the expiration of the Term or any extension period thereafter, or if this PERMIT is terminated, COUNCIL shall:
- a. Immediately remit all COUNCIL funds to CITY. All such funds shall thereafter be utilized by CITY for promoting and conducting community recreation programs within the AREA, unless previously earmarked and approved by CITY for a specific purpose;
  - b. Deliver to the DIRECTOR all books, data, records, work product, and agreements prepared and/or completed in connection with, or related to, COUNCIL's performance under this PERMIT, as well as all COUNCIL funds, accounts receivable attributable to the use of such funds, and any other assets of the COUNCIL within ten (10) days of the expiration or termination of this PERMIT;
  - c. Prepare and deliver a financial statement, as described in Article VII, to the DIRECTOR within ten (10) days of the expiration or termination of this PERMIT;
  - d. In the event COUNCIL is not dissolved upon expiration or termination of this PERMIT, then the COUNCIL shall immediately change its name to exclude the term "Park and Recreation Council";
  - e. Cooperate with the DIRECTOR for any additional work necessary for the orderly filing of documents and closing of COUNCIL's performance of its pending obligations and duties under this PERMIT; and

- f. Post a notice, provided by the DIRECTOR, that upon the expiration or termination of the PERMIT, all COUNCIL funds will be remitted to CITY, transferred to another recreation council, or transferred to another sanctioned organization, in the DIRECTOR's sole discretion, for use in community recreation programming within the AREA.

**ARTICLE X  
CONFLICTS OF INTEREST**

- 10.1 No Economic Conflicts. The parties to this PERMIT are unaware of any financial or economic interest of any public officer or employee of the CITY relating to this PERMIT. If such a financial and/or economic interest is determined to exist, the CITY will promptly terminate this PERMIT by giving written notice thereof.
- 10.2 Conflicts of Interest. All MEMBERS and COUNCIL personnel employed in performing the obligations and duties under this PERMIT, as individuals, and COUNCIL as a whole, shall at all times comply with all applicable laws regarding conflicts of interest. Unless permitted by applicable laws, no MEMBER shall vote or otherwise participate in any COUNCIL action or project if that MEMBER has a direct or indirect economic interest in the action or project.

**ARTICLE XI  
CITY POLICY PROVISIONS**

- 11.1 No Nuisance. COUNCIL shall not use the AREA, or authorize use of the AREA, in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.
- 11.2 Signs. COUNCIL shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found in the AREA, COUNCIL shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at COUNCIL's cost.
- 11.3 Drug-Free Environment. It is the policy of CITY that all facilities provided under this PERMIT shall be utilized and operated in a drug-free environment. COUNCIL shall initially and periodically make this fact known, both in writing and in oral communication, to any individuals making use of park facilities within the AREA where COUNCIL has authorized the use of any such facility. COUNCIL shall document such written or oral communication and provide copies to CITY on an annual basis.
- 11.4 No Discrimination. COUNCIL shall not discriminate or permit discrimination in any manner against any person or class of persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, ethnicity, age, marital status or disability, including without limitation the provision of goods, services facilities, privileges, advantages and accommodations, and the hiring and retention of employees

and contractors.

11.5 Compliance with Disability and Other Laws. COUNCIL shall comply with the California Fair Employment and Housing Act, the Federal Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and any other applicable local, state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. COUNCIL's compliance shall include, without limitation, the following:

- a. COUNCIL shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment;
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of COUNCIL;
- c. COUNCIL shall post a statement addressing the requirements of the ADA in a prominent place at the work site; and
- d. COUNCIL shall include language in each agreement, if any, indicating the contractor's agreement to abide by the foregoing provisions.

COUNCIL and each of its contractors shall be individually responsible for their own ADA compliance program. COUNCIL's failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this PERMIT.

## **ARTICLE XII GENERAL PROVISIONS**

12.1 Compliance with Law. COUNCIL shall at all times in its use, occupancy, use, maintenance and restoration of the AREA comply with all applicable laws, rules, regulations, and directives of competent governmental authorities, and at COUNCIL's sole cost and expense. At least annually, COUNCIL shall deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to COUNCIL.

12.2 Open Meeting and Brown Act Compliance. COUNCIL, and all committees and subcommittees thereof, are subject to and shall comply with the Ralph M. Brown Act, codified in California Government Code sections 54950-54963 ("Brown Act"). All meetings of COUNCIL, and of any of its committees and subcommittees, shall be noticed and conducted in compliance with the Brown Act. Accordingly, for all such meetings an agenda containing the date, time and location of the meeting, and a general description of each item of business to be discussed or transacted, shall be posted in a place freely accessible to the public at least 72 hours prior to the meeting. At the time of the posting

of the agenda, the agenda shall also be sent, by facsimile, via the United States Postal Service, or electronic mail, to every member of the public who has requested notification of the meetings.

- 12.3 California Public Records Act. COUNCIL shall comply with the provisions of the California Public Records Act, codified in California Government Code sections 6250-6270, for all documents and records pertaining to all matters in connection with this PERMIT.
- 12.4 Waiver. The property constituting the AREA is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of COUNCIL's obligations under this PERMIT, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this PERMIT, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
- 12.5 Cumulative Remedies. CITY's rights and remedies under this PERMIT are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
- 12.6 Survival. Any obligation which accrues under this PERMIT prior to its expiration or termination shall survive such expiration or termination.
- 12.7 Assignment and Sublicense. COUNCIL shall not assign or sublicense any rights granted by this PERMIT or any interest in this PERMIT without CITY's prior written consent in each instance. Any assignment by operation of law shall automatically terminate this Permit.
- 12.8 Authority to Contract. Each individual executing this PERMIT on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this PERMIT on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this PERMIT is binding upon such person or entity in accordance with its terms. Upon request by the DIRECTOR, each person executing this PERMIT on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

[NAME] Recreation Council SUP

IN WITNESS WHEREOF, THIS PERMIT is executed by CITY, acting by and through the Park and Recreation Director, and by COUNCIL through its legally authorized representative(s).

THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
Herman Parker, Director  
Park and Recreation Department

Date: \_\_\_\_\_

\_\_ [NAME] \_\_ RECREATION COUNCIL

By: \_\_\_\_\_  
[Name] COUNCIL Representative

Date: \_\_\_\_\_

By: \_\_\_\_\_  
[Name] COUNCIL Representative

Date: \_\_\_\_\_

APPROVED as to form and legality  
this \_\_\_ day of \_\_\_\_\_, 20\_\_.

JAN I. GOLDSMITH, City Attorney

By: \_\_\_\_\_  
\_\_\_\_\_  
Deputy City Attorney

Attachment A: Geographic Area Map (Area)  
Attachment B: Standard Operating Procedures and Responsibilities for Recreation Councils

## ATTACHMENT B

### STANDARD OPERATING PROCEDURES AND RESPONSIBILITIES FOR RECREATION COUNCILS July 2015

Pursuant to San Diego City Council Policy 700-42, the Park and Recreation Department (DEPARTMENT) of the City of San Diego (CITY) has assumed the responsibility for the organization of recreation councils. The DEPARTMENT has adopted these "Standard Operating Procedures and Responsibilities for Recreation Councils" (SOP) in order to govern the creation and operation of all recreation councils in the City.

Unless expressly otherwise defined herein, all terms and definitions in this SOP shall have the same definition and meaning as provided in the "Special Use Permit, Recreation Council" (PERMIT) issued by the CITY to a recreation council (COUNCIL).

#### 1. POLICY

- 1.1 No COUNCIL shall be entitled to a relationship with and benefit from the CITY absent an effective PERMIT and COUNCIL's compliance with the PERMIT and these SOP. All COUNCILs shall operate in full compliance with the terms and conditions of the PERMIT with that COUNCIL, and with this SOP. In the event of any conflict between the PERMIT and this SOP, the PERMIT shall control.
- 1.2 COUNCIL shall adopt and operate under an official name, which shall include the respective community or site name followed by "Park and Recreation Council." All COUNCIL activities shall be conducted in the COUNCIL's official name.

#### 2. PURPOSE OF THE COUNCIL

- 2.1 The purpose of the COUNCIL shall be to promote recreation programs in the community through planning, administering, publicizing, coordinating, and providing community programs. As provided in the PERMIT, the COUNCIL will have limited jurisdiction over recreational activities at those CITY park facilities within the COUNCIL's designated geographic area (AREA).
- 2.2 As provided in Council Policies, including Council Policy 600-33, the COUNCIL shall serve as the recognized conduit and sponsor for community input regarding park and recreation programs and facilities and park development projects. Accordingly, the COUNCIL shall provide input and make recommendations for all park development projects planned within the AREA. Additionally, the COUNCIL may also make recommendations to the DEPARTMENT, the Park and Recreation Board,

and other park advisory committees on other matters related to park and recreation programs and facilities. Notwithstanding any of the foregoing, all such input and recommendations by the COUNCIL are advisory only, and are not binding on the CITY or any official or body thereof.

- 2.3 The COUNCIL and each member thereof (MEMBER) shall act in the best interests of the CITY at all times. No MEMBER shall identify affiliation with the COUNCIL in public communications unless that MEMBER is specifically authorized by the COUNCIL to act as its official representative. Public communications include, but are not limited to, written communications, public testimony and newspaper interviews.

### 3. COUNCIL OPERATION AND STRUCTURE

- 3.1 All COUNCIL recommendations, and official authorizations, positions, and opinions shall be obtained through broad community input by a public meeting of COUNCIL held in compliance with the Ralph M. Brown Act (California Government Code sections 54950-54963) (Brown Act), DEPARTMENT policies, and the requirements of the PERMIT and SOP. All members of the public shall be given the opportunity to comment on items during COUNCIL meetings.
- 3.2 The COUNCIL shall adopt bylaws (Bylaws) that shall be in accordance with the terms and conditions of the PERMIT and these SOP. The COUNCIL's Bylaws shall be subject to review and approval by the DEPARTMENT Director (DIRECTOR), in his or her sole discretion, for compliance with the PERMIT and these SOP. Failure of the Bylaws to comply with applicable laws, the PERMIT, these SOP, or any aspect thereof, shall be cause for not issuing, or revoking, a PERMIT.
- 3.3 The Bylaws shall provide that in the event of a conflict between any provisions of the Bylaws and the PERMIT and these SOP, the terms, conditions and obligations of the PERMIT and these SOP shall control.
- 3.4 The COUNCIL may amend its Bylaws according to the process set forth in the Bylaws. Upon adoption of any amendments to COUNCIL's Bylaws, COUNCIL shall provide the DIRECTOR with a complete copy of the COUNCIL's amended Bylaws within ten (10) days of COUNCIL's adoption of the amendments. The DIRECTOR may review and, in his or her discretion, approve the COUNCIL's amended Bylaws. In the event that the DIRECTOR does not approve adopted amendments to the Bylaws, the DIRECTOR may require the COUNCIL to revise its Bylaws in order to conform to the terms and conditions of the PERMIT and these SOP. COUNCIL's failure to maintain its Bylaws in conformity with the provisions of the PERMIT and these SOP shall be grounds for immediate summary suspension of the PERMIT and for termination of the PERMIT.

- 3.5 It shall be the duty of each MEMBER to attend all COUNCIL meetings. The minimal amount of MEMBERS in attendance at each COUNCIL meeting in order to constitute a quorum shall be stated in the Bylaws, but such quorum shall not be less than the greater of either twenty-five percent (25%) or three (3) MEMBERS. A quorum must be present in order to conduct business and/or to vote on projects or actions at regular COUNCIL meetings. **Proxy or phone votes are strictly prohibited.**
- 3.6 After every COUNCIL meeting, COUNCIL shall prepare a report of attendance and a copy of the draft minutes. The draft minutes shall include final voting results on each matter acted upon at the meeting, including the number of yea, nay, and abstention votes. The draft minutes shall be available to the public at a publicly-accessible area at the location where the COUNCIL regularly conducts its meetings and official business as soon as reasonably possible, and at least 72 hours prior to the next COUNCIL meeting. A copy of the draft minutes shall also be delivered to the DEPARTMENT-designated representative by the same time. Any changes to the draft minutes shall be discussed and adopted by a majority vote of the MEMBERS present at that next COUNCIL meeting. Once approved, copies of approved minutes shall be available to the public within 72 hours of the next scheduled COUNCIL meeting, and shall be kept for a minimum of thirty (30) calendar days at the location where the COUNCIL regularly conducts its meetings and official business.
- 3.7 COUNCIL shall maintain a current, up-to-date roster of the names of each and every MEMBER and whether each MEMBER is an at-large member or an organization member. The roster shall be provided by the COUNCIL to the DEPARTMENT promptly, but no later than within thirty (30) days, upon any change.
- 3.8 It shall be the duty of the COUNCIL to periodically outreach to its community through such methods as local newspapers or community events to further community-wide understanding of and participation in COUNCIL duties, activities, and decisions. The COUNCIL shall give due consideration to all responsible community input in order to identify what is in the best long-term interest of the community at large.
- 3.9 When considering proposed park development projects for COUNCIL recommendation, COUNCIL shall allow participation of all members of the public, including those from other areas as directed by the DEPARTMENT, and with special emphasis on obtaining participation from property owners, residents, and business establishments in proximity to the proposed development. The COUNCIL shall inform the project applicant or representative each time such review by the COUNCIL will take place, and provide the applicant with an opportunity to present the project.

4. MEMBERSHIP

- 4.1 The COUNCIL shall consist of not less than five (5) current MEMBERS, nor more than fifteen (15) current MEMBERS. The DIRECTOR may, in his or her discretion, approve a larger membership for the COUNCIL, when such membership would give better representation to a community.
- 4.2 The membership of a COUNCIL may consist of at-large and organization MEMBERS. The Bylaws shall state the total number of MEMBERS and the percentage, if any, of at-large MEMBERS of the COUNCIL. An at-large MEMBER shall mean any individual who lives, works, or owns property in the AREA. An organization MEMBER shall mean an individual who represents an organized or special interest community service or athletic group that conducts primary operations within the AREA. Organization members and at-large MEMBERS shall be elected or otherwise confirmed as a MEMBER in compliance with the Bylaws.
- 4.3 To be eligible as a MEMBER an individual must be at least eighteen (18) years of age. MEMBERS shall be, to the extent possible, representative of the AREA. MEMBERS must be willing to accept and perform responsibilities delegated by the COUNCIL. Eligibility may be further defined in the Bylaws, but may not alter the eligibility requirements set forth in these SOP.
- 4.4 COUNCIL shall select MEMBERS as set forth in the Bylaws, which may be determined by an AREA-wide election process or by a confirmation process. If the Bylaws authorize MEMBER selection by the confirmation process, the Bylaws shall require the potential MEMBER to attend three (3) consecutive meetings prior to submitting a letter of intent to the DEPARTMENT representative for the COUNCIL.
- 4.5 Any MEMBER found by the COUNCIL, by a preponderance of evidence, to be in violation of the Bylaws, the COUNCIL's corporate governance documents, the PERMIT, or these SOP, may be removed from the COUNCIL by two-thirds vote and confirmation by the DIRECTOR. A MEMBER may also be removed, pursuant to a two-thirds vote of the COUNCIL and confirmation by the DIRECTOR, after three consecutive unexcused absences or four total unexcused absences in the prior twelve (12) months from the COUNCIL's regular meetings. For any potential removal of a MEMBER, the MEMBER at issue shall be informed by the COUNCIL, in writing, at least thirty (30) calendar days in advance of any action to revoke his or her membership.
- 4.6 A vacancy exists upon receipt of a written resignation from a MEMBER, or upon removal of a MEMBER pursuant to these SOP or the Bylaws. In

the event of a vacancy, new MEMBERS shall be added as provided in the Bylaws. The term of office of a MEMBER filling a vacancy shall be for the balance of the vacated term.

- 4.7 No membership dues may be required.

## 5. OFFICER ELECTIONS

- 5.1 Elections of COUNCIL officers shall be held in accordance with the Bylaws. Voting on the election of officers shall be by written ballot. No secret ballot shall be permitted. Ballots shall be available at the noticed COUNCIL meeting at which the election will be held. COUNCIL shall retain completed ballots and make them available to the public, upon request, at a publically-accessible area at the location where the COUNCIL regularly conducts its meetings and official business, for a minimum of thirty (30) calendar days from the related election. The results of the election shall be reported in the COUNCIL meeting and contained in the minutes as set forth in these SOP.
- 5.2 The COUNCIL officers shall be MEMBERS of the COUNCIL. Officers shall be elected by a majority vote of the MEMBERS present at the meeting, and only after notice of the election was announced and posted at the previous regular meeting of the COUNCIL. Officer positions shall be set forth in the Bylaws; however, the COUNCIL shall have at least the following officers: Chairperson/President; Vice Chairperson/Vice President; Secretary; and Treasurer/Chief Financial Officer. The Bylaws may create additional officers. The Bylaws shall set forth the length of each officer's term; however, no term shall exceed two (2) years. No person may serve in the same office of the COUNCIL for more than four (4) consecutive years, unless authorized by the DIRECTOR in his or her sole discretion.
- 5.3 The Bylaws shall set forth a written procedure for disciplinary action of and removal of COUNCIL officers and shall create an appropriate appeals process.

## 6. OFFICER DUTIES

- 6.1 The duties of all COUNCIL officers shall be stated in the Bylaws.
- 6.2 The Chairperson/President shall be the principal officer of the COUNCIL, preside over the COUNCIL meetings, sign approved minutes for all meetings he or she attended, and review annual COUNCIL financial reports. The COUNCIL agenda for each meeting shall be prepared in accordance with the desires and priorities expressed by the President/Chairperson.

- 6.3 The Vice Chairperson/Vice President shall perform all of the duties and responsibilities of the Chairperson/President in the absence of the Chairperson/President.
- 6.4 The Secretary shall prepare all correspondence on behalf of the COUNCIL, sign all approved minutes from COUNCIL meetings, and may prepare COUNCIL agenda and minutes. Upon request by the COUNCIL, the DIRECTOR may appoint a DEPARTMENT representative to assist the COUNCIL as a recording secretary. Said DEPARTMENT representative may: (1) maintain an attendance record and membership roster; (2) report on the attendance record and membership roster at each COUNCIL meeting; (3) record, prepare, and maintain minutes of the COUNCIL meetings; (4) make minutes available to the COUNCIL and general public; and (5) compile and post COUNCIL meeting agendas. The appointed DEPARTMENT representative shall not fulfill any other duties that are to be performed by the Secretary. Notwithstanding the foregoing, both the Secretary and COUNCIL Chairperson/President shall sign the approved minutes of COUNCIL meetings as required by this SOP.
- 6.5 The Treasurer shall oversee the receipt, deposit, and disbursement of all COUNCIL funds, and shall submit, or cause to be submitted, all necessary returns and reports required by federal and state directives. The Treasurer shall ensure accuracy of all financial transactions as required by the PERMIT and the DEPARTMENT. The Treasurer shall submit a financial report at each regular COUNCIL meeting covering all transactions since the prior meeting. All disbursements must be approved by a majority vote of the COUNCIL. Any disbursements by the COUNCIL shall require the signatures of at least two COUNCIL officers. In the event that annual gross receipts of the COUNCIL total less than \$100,000, the DEPARTMENT may assist the COUNCIL in financial matters by doing such things as collecting and tracking revenues, making bank deposits, and reconciling bank statements. Notwithstanding the foregoing, the Treasurer shall at all times still remain responsible for all of his or her other duties under the Bylaws and these SOP.
- 6.6 Notwithstanding anything to the contrary in this SOP, upon request by the COUNCIL the DIRECTOR may, in his or her sole discretion, appoint a DEPARTMENT representative to serve the COUNCIL and to perform any of the COUNCIL or COUNCIL officer duties or functions required by the PERMIT or these SOP. In no event shall the foregoing require, or be interpreted as requiring, the DIRECTOR to provide any such personnel or other support to serve or assist the COUNCIL.